

September 28, 1999

PUBLIC UTILITIES COMMISSION
Amendments to Chapter 322

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to amend certain portions of Chapter 322, the rule that governs interactions among transmission and distribution utilities (T&D utilities) and competitive electricity providers (CEPs). The proposed amendments alter the partial payment section of the original rule, limit the provision on retaining enrollments when customers move to a new location, modify the customer data provision to comply with recently enacted legislation, simplify the contract approval process, and make minor language changes consistent with other rules.

II. BACKGROUND

By orders dated March 16, 1999 and April 9, 1999, the Commission adopted Chapter 322 of its rules. This rule governs the interactions among T&D utilities and CEPs involving metering, billing, collections, and customer enrollments. The proposed amendments to the rule result from ongoing efforts to implement electric industry restructuring. These efforts have revealed areas of the current rule in which amendments are either necessary or desired. We discuss below each of the proposed amendments to the rule.

III. DISCUSSION OF PROPOSED AMENDMENTS

A. Definitions (Section 1)

The proposed amended rule contains minor changes to the definitions of “aggregator” and “broker” to be consistent with statutory language and terminology used in other rules. We have also added a definition of “customer-specific information” to comply with a recent legislative directive regarding the provision by utilities of customer data to CEPs. We discuss this aspect of the proposed rule in section III(D) below.

B. Allocation of Payments (Section 6 (C))

1. Partial Payments

For CEPs that choose consolidated utility billing, the current rule specifies that partial payments will be allocated first to the oldest month in which an

unpaid charge exists, and within that month, to the T&D charge, followed by the CEP charge. Ch. 322, § 6(C). In our order adopting Chapter 322, we explained that this allocation approach balances consumer protection concerns (i.e. avoiding disconnection for nonpayment of utility charges) with promoting broad participation in Maine's market. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 98-810 at 19-21 (April 9, 1999). However, as a result of utility requests to waive certain provisions of Commission rules, we have decided that it is necessary to propose changing the partial payment allocation provision. The proposed amendment would allocate partial payments first to the utility bill, including all months past due amounts, then to the CEP bill.

On July 12, 1999, Central Maine Power Company (CMP) filed a request for exemptions and waivers regarding certain provisions of Commission rules. Specifically, CMP sought a waiver from Chapter 81, section 8 (A)(1), which prohibits utilities from including charges for non-basic service on their disconnection notices (Docket No. 99-479). Because CEP charges are for non-basic service, a waiver would be required to allow CMP to include the CEP overdue amount on its disconnection notice. CMP explained that such a waiver is required as a result of the operation of the current Chapter 322's partial payment provision. Because this provision allocates payments to the oldest month first, a customer, in many circumstances, would have to pay more than the overdue utility amount to avoid disconnection (this occurs because a certain portion of every dollar paid to the utility would be transferred to the CEP for payment of its past due amount). CMP requested the Chapter 81 waiver to avoid customer confusion; the waiver would allow it to specify the total amount of money (both utility and CEP charges) that must be paid to avoid disconnection. Without the waiver, only the utility charges could be specified. If the customer paid this amount, and a portion was transferred to the CEP pursuant to Chapter 322, the customer would remain subject to disconnection because the utility would not have been paid in full.

On July 16, 1999, Maine Public Service Company (MPS) filed a letter, seeking a Chapter 81 waiver for the same reasons specified by CMP. On August 6, 1999, Bangor Hydro-Electric (BHE) filed a letter, stating that CMP's proposed solution (i.e. waiver of Chapter 81) may not be the best approach. Instead, BHE proposed that the Commission waive the partial payment provision of Chapter 322 when a customer is at risk of disconnection due to non-payment of its T&D bill. Specifically, under these circumstances, the payment allocation rules would change so that the T&D past due amounts would be satisfied before the CEP amounts; once the delinquency scenario is remedied, the allocation method would return to the oldest amount first.

Upon careful consideration of the waiver requests, we have determined that it is necessary to re-examine the partial payment provision of Chapter 322. For the following reasons, we propose to amend the rule to apply partial payments first to the T&D utility's unpaid charges. In our view, there is an insurmountable problem with CMP's proposed solution regarding disconnection notices. Section 3203(14) of Title 35-A prohibits a T&D utility from disconnecting service to a consumer for nonpayment of generation service charges. The intent of this provision is to prevent

customers from losing access to a necessary monopoly service as a result of not paying a bill for a competitive service. The addition of CEP charges to the amount due on disconnection notices, as proposed by CMP and MPS, would clearly violate the intent of the prohibition contained in section 3203(14), because customers would be presented with the threat of disconnection if they failed to pay the CEP, as well as the T&D bill. BHE's approach of waiving the allocation scheme when in a "disconnection scenario" would be an exception that would basically cause the current partial payment allocation provision to be meaningless. This is the case because utilities may issue disconnection notices when customers do not pay their bills within 30 days. In addition, CMP and MPS indicated that they could not develop the systems necessary to implement the BHE approach by the beginning of retail access.

Thus, primarily as a result of the statutory prohibition on disconnection for failure to pay generation charges,¹ we propose to amend the rule so that partial payments are first allocated to T&D utility charges. We note that this is the approach used in Massachusetts and Pennsylvania, so that Maine will not be unusual in this regard. Additionally, this partial payment treatment does not apply to standard offer customers, because, pursuant to Chapter 301, § 4(D), standard offer providers do not have a collections risk. Thus, this treatment would be applicable only to delinquent customer accounts of CEPs that choose to have utilities bill for their generation service.

2. Payment Arrangements

The waiver requests discussed above also raised an issue regarding the allocation of funds when a customer is on a payment arrangement. The problem arises under either the current or proposed partial payment provision because, by definition, payment arrangement customers are not paying their accounts in full. As a result, payment arrangement customers who pay their agreed-upon monthly T&D bill plus their current CEP bill would not actually have their CEP bill paid in full. This is because the allocation rule would operate to allocate the amount over the monthly T&D bill to the old T&D arrearage. Thus, customers might believe they had paid their combined bill in full, but would not have paid their entire CEP bill. To address this problem, CMP and BHE proposed that, when a payment arrangement is in effect on an account which is being served by a CEP, partial payments should be allocated first to the amount owed to the utility under the payment arrangement and then to the CEP's charges. We have incorporated this suggestion into the proposed rule.

¹ We note that this statutory prohibition does not apply to failure to pay for standard offer service.

C. Customer Moves to New Location (Section 7(D)(2))²

The current rule specifies that if a customer moves to a new location within a T&D utility territory, the customer's CEP will be automatically maintained (if the utility has not received a notice to enroll from a new CEP). Ch. 322, § 8(B)(2). During discussions within the Electronic Business Transactions (EBT) working group,³ it was revealed that this provision would be problematic in the event the new location did not have a meter that was compatible with the CEP's rates (e.g., the customer is currently charged a time-of-use rate by its CEP and the new location does not have a time-of-use meter). For this reason, the proposed amended rule states that the new location provision applies only if there is a meter that is compatible with the CEP's rates. If not, the customer will be transferred to the standard offer.

D. Transfer of Customer Data (Section 9)

The current rule states that before a CEP requests customer information from a utility, it must obtain customer authorization pursuant to 35-A M.R.S.A § 3205(3)(I). Ch. 322, § 9(A)(5). This statutory provision specified that a utility may not release proprietary customer information without prior written authorization from the customer. During its last session, the Legislature repealed this provision and replaced it with the following language:⁴

A transmission and distribution utility may not release any customer-specific information to a licensed competitive electricity provider unless the provider produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

P.L. 1999, ch. 237 (codified at 35-A M.R.S.A. §3203 (16-A)).

² In the current rule, the subsection "Procedure when Delivery Service Changes," which includes the provision regarding moves to new locations, is contained in section 8. Section 8 generally governs the cancellation of service. We have moved the provisions on delivery service to section 7 of the amended rule because the subject matter is more closely related to the general topic of enrollments.

³ The EBT working group was established by the Commission in Docket No. 98-522.

⁴ The provision was contained in the section of the statute on standards of conduct between utilities and their marketing affiliates. Because the provision applies beyond utility affiliates, it appears to have been misplaced. The new provision is in the licensing section of the statute.

As a result of this legislation, we have added provisions to the rule that specify when customer-specific information may be released.

As mentioned above, we have added a definition of “customer-specific information.” The definition is the same as that contained in Chapter 820 and includes a particular customer’s usage, technical configuration and type of utility service.

We have also added requirements for both CEPs and T&D utilities. The proposed amended rule requires CEPs to obtain customer authorization prior to requesting customer-specific information from the utility. The proposed rule specifies that the authorization must be written or, for lower usage customers, the authorization may be satisfied by a conspicuous statement in the terms of service document (required by Chapter 305 for customers with demands below 100 kW) that, by choosing the CEP, the customer authorizes the release of usage data. This provision is intended to reduce the burden on CEPs to obtain individual customer authorizations from residential and small commercial customers.

Consistent with the statute quoted above, utilities, under the proposed rule, must obtain evidence that the CEP has complied with the customer authorization requirement. However, it is our view that the primary responsibility regarding customer authorization should rest with the CEP, the entity that is seeking the data for its own business purposes. For this reason, the proposed rule states that the utilities’ requirement is satisfied by a provision in the CEP/utility contract that obligates the CEP to seek customer data from the utility only after complying with the Commission’s rules on customer authorization.⁵

We have also re-organized this section of the rule into two subsections: 1) transfer of customer-specific data; and 2) routine business data. Routine business data refers to the everyday data transfer between utilities and CEPs as specified in the EBT standards (e.g. load settlement and billing data). The proposed rule specifies that the enrollment of a customer constitutes authorization for the utility to send routine business data to the CEP. This is appropriate because ongoing current information is necessary for the CEP to provide service, and the customer should thus be deemed to have consented to the provision of this data. Additionally, we have modified the language to clarify that costs of both sending and receiving data pursuant to the EBT standards shall be the responsibility of the entity that sends or receives the data.

We have also specified that the “transfer of customer-specific data” section applies to aggregators, brokers, and standard offer providers, and that the routine business data section applies to standard offer providers. These provisions are necessary because section 2(B) of the rule states that, unless otherwise stated, the provisions of the rule do not apply to aggregators, brokers, and standard offer providers.

⁵ We intend to modify the standard CEP/utility contract developed in Docket No. 99-170 to include such a provision.

The failure to apply the customer data provisions to the entities indicated above was an oversight in the original rule.

E. Approval of Contracts (Section 10)

Section 10 of the rule requires T&D utilities and CEPs to enter into a contract that defines their respective obligations. The current rule requires each such contract to be filed for Commission approval and specifies that a decision on the contract will be made within 60 days. The Commission convened a working group to develop standard form contracts between utilities and CEPs (Docket No. 99-170). During discussions within that group, questions arose as to the need for specific approval of every contract that conforms to the standard form contract. We have, thus, reconsidered this provision and now propose that contracts that conform to the standard form be filed only for informational purposes and not be subject to approval. However, contracts that deviate from the standard form would require Commission approval. This approval is warranted to assure that utilities are treating all CEPs fairly and are acting in the interest of their ratepayers. To streamline the process, we have reduced the initial review period to 30 days and have delegated approval authority to our Director of Technical Analysis.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on October 28, 1999 at 2:00 p.m. at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until November 12, 1999. However, the Commission requests that comments be filed by October 25, 1999 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 99-659, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing accessible by calling 287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached rule to:

1. All electric utilities in the State;

2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

3. All persons listed on the service list or filed comments in the Rulemaking, *Metering, Billing, Collections, and Enrollment Interactions among Transmission and Distribution Utilities and Competitive Electricity Providers* (Chapter 322), Docket No. 98-810;

4. All persons listed on the service list or who filed comments in the Inquiry, *Inquiry into Provisions for Interactions Among Transmission and Distribution Utilities and Competitive Electricity Providers Regarding Metering, Billing and Collection, Service Commencement, and Service Contract*, Docket No. 98-482;

5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

6. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Accordingly, we

ORDER

That the Administrative Director send copies of this Notice of Rulemaking and attached proposed Rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed Rule; and

Dated at Augusta, Maine, this 28th day of September, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond